

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI**

WADE BURRIS, Individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

THE SHERWIN-WILLIAMS COMPANY,

Defendant.

Case No.: 4:15-cv-343

**DEFENDANT’S NOTICE OF REMOVAL**

Defendant The Sherwin-Williams Company (“Sherwin-Williams”) hereby notices removal of the above-captioned state court civil action pending in the Circuit Court of Jackson County, Missouri at Kansas City to the United States District Court for the Western District of Missouri. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441.

In further support of this Notice of Removal, Sherwin-Williams states as follows:

**PROCEDURAL HISTORY**

1. On March 18, 2015, Plaintiff Wade Burris (“Plaintiff”) filed this action in the Circuit Court of Jackson County, Missouri at Kansas City. A true and correct copy of the Complaint (including exhibit attached to that Complaint) is attached hereto as **Exhibit 1**.

2. The Complaint alleges that Plaintiff has a cell phone and pays for his cellular phone service. Ex. 1 ¶13. The Complaint also alleges that Plaintiff signed up to receive text promotions on his cell phone from Sherwin-Williams as part of the Sherwin-Williams Paint Pro Alerts program. Ex. 1 ¶ 14. The Complaint further alleges that, in January 2015, Plaintiff texted STOP to two separate text message offers that he received pursuant to the Paint Pro Alerts

program, and that, in response to each STOP message, Sherwin-Williams acknowledged via text message that Plaintiff unsubscribed from the Paint Pro Alerts program. Ex. 1. ¶ 15. The Complaint also alleges that Sherwin-Williams continued to send Plaintiff further promotional text messages without Plaintiff's consent, and that those text messages were sent by Sherwin-Williams to Plaintiff's cell phone number using an automatic telephone dialing system. Ex. 1 ¶ 15, 17-18.

3. The Complaint asserts, on behalf of Plaintiff and an alleged class of similarly situated persons, a federal claim for damages and injunctive relief pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. Ex. 1 ¶¶ 37, 43.

4. On April 9, 2015, Plaintiff caused a hand-delivered copy of the Class Action Petition and the summons to be delivered to Sherwin-Williams' designated agent for service of process in the State of Missouri: CSC-Lawyers Incorporating Service Co., at 221 Bolivar, Jefferson City, Missouri, 65101 ("CSC-Lawyers"). A true and correct copy of the summons delivered to CSC-Lawyers is attached as **Exhibit 2**. A true and correct copy of Plaintiff's return of service is attached as **Exhibit 3**. Exhibits 1, 2, and 3 constitute all of the process, pleadings, and orders served on Sherwin-Williams in this case, and are attached hereto pursuant to 28 U.S.C. § 1446(a).

### **PARTIES**

5. Plaintiff Wade Burris is an individual and resident of the State of Missouri, County of Jackson, and City of Kansas City. Ex. 1, ¶ 1.

6. Defendant The Sherwin-Williams Company is an Ohio Corporation with its principal place of business in Cleveland, Ohio, authorized to do business in the State of Missouri and Kansas City, Missouri.

### **TIMELINESS OF REMOVAL**

7. Sherwin-Williams was served with a copy of the summons and complaint on April 9, 2015. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b) and Rule 6(a).

### **BASIS FOR REMOVAL JURISDICTION**

8. Removal is proper under 28 U.S.C. § 1331 because the Complaint presents a claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Count I of the Complaint asserts a violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. *See* Ex. 1 ¶¶ 33-39. Count II of the Complaint seeks an injunction and requests a restraining order pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(3)(A). *See* Ex. 1 ¶ 43.

9. Pursuant to 28 U.S.C. § 1441(a), a defendant may remove “any civil action brought in a state court of which the district courts of the United States have original jurisdiction.” As set forth above, the Court has original jurisdiction over Plaintiff’s federal claim under § 1331 because it arises under the laws of the United States. In light of the foregoing, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

### **REMOVAL TO THE WESTERN DISTRICT OF MISSOURI IS PROPER**

10. Venue is proper in this District under 28 U.S.C. § 1391.

11. Removal to the United States District Court for the Western District of Missouri is proper because it is the district and division within which the state action is pending. *See* 28 U.S.C. § 1446(a).

### **NOTICE TO STATE COURT AND PLAINTIFF**

12. Pursuant to 28 U.S.C. § 1446(d), this Notice of Removal will be filed with the Clerk of the Circuit Court of Jackson County, Missouri at Kansas City and served upon counsel for Plaintiff promptly.

WHEREFORE, the case now pending in the Circuit Court of Jackson County, Missouri at Kansas City, Case No. 1516-CV06036, is hereby removed to the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

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THE SHERWIN-WILLIAMS COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **NOTICE OF REMOVAL** was filed with the Clerk of Court on 7th day of May, 2015 using the CM/ECF system. And, I hereby certify that I have caused to be mailed or served the document or paper upon the following counsel by first-class mail postage prepaid:

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